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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,197	02/27/2004	Wolfgang Brixius	BRIXIUS-8	6977
20151	7590	10/20/2005	EXAMINER	
HENRY M FEIEREISEN, LLC 350 FIFTH AVENUE SUITE 4714 NEW YORK, NY 10118			DEUBLE, MARK A	
		ART UNIT	PAPER NUMBER	
		3651		
DATE MAILED: 10/20/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/789,197	BRIXIUS ET AL.	
	Examiner	Art Unit	
	Mark A. Deuble	3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1,8 and 9 is/are rejected.
- 7) Claim(s) 2-7 and 10-15 is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date ____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date ____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Reed et al. (U.S. Patent No. 3,334,723) as in the office action of May 6, 2005.

The transport system disclosed by Reed et al. includes all the claimed features and in particular includes: at least one switch 6 having an entry zone 8 and exit zone with at least two different transport paths 2, 4, a switch mechanism LS3, LS4 for selectively controlling transport of articles to the transport paths, a support assembly with a support surface 6a defining a plane for support of the articles between the entry zone and the exit zone; an alignment and propulsion mechanism 14 disposed in the entry zone for aligning and advancing the container in a controlled manner, a propulsion and guide assembly 16 including at least two modules 18, 20 disposed in the exit zone.

In regard to the added limitations that the at least two modules are constructed for elevation into the transport paths above the plane of the support assembly and that the propulsion and guide assembly include a control mechanism that operates the modules, it should be noted that both modules 18 and 20 are disposed in the exit zone of the switch below the plane of the support assembly. The module 20 is disposed entirely below the plane of the support assembly until they are elevated by lift means 44 above the plane of the support assembly by the control

means such that only one of the modules is raised into a plane above the plane of the support assembly at any given time to transport the container the path corresponding to the raised module. While the top run of the module 18 is disposed in the plane of the support assembly rather than below the support assembly, the majority of the module lies below the plane of the support assembly so that it may be said to be at least partially disposed below the plane of the support assembly. Furthermore, while the module 18 does not include the lift means of the module 20, the rails 18b that support the chains 18a of the module 18 could be lifted by an external means above the plane of the support assembly. Thus, the module 18 meets the passive language of the claims requiring the modules to be constructed for elevation into the transport paths above the plane of the support assembly.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reed et al.
The use of ball rollers to facilitate transport objects over a support surface without damaging the objects is well known in the art and their use on the support surface 6a of Reed et al. would have been obvious to one of ordinary skill in the art at the time of the invention.

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Allowable Subject Matter

5. Claims 2-7 and 10-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

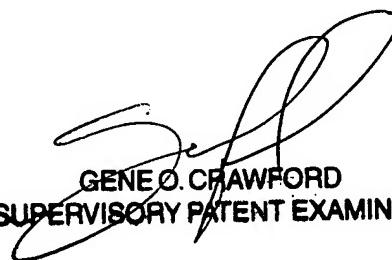
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Deuble whose telephone number is (571) 272-6912. The examiner can normally be reached on Monday through Friday except for alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

md



GENE O. CRAWFORD
SUPERVISORY PATENT EXAMINER